

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In RE: ANTHONY GERALD)	
POOLE and JOANN POOLE,)	
)	
Debtors,)	
)	
FERGUSON MEDICAL GROUP,)	
L.P., a limited partnership,)	
)	
Appellant,)	
)	
vs.)	Case No. 1:05CV119 CDP
)	
ANTHONY GERALD POOLE,)	
et al.,)	
)	
Appellees.)	

MEMORANDUM AND ORDER

This matter is before the Court on Ferguson Medical Group's motion for leave to appeal a decision of the bankruptcy court. On May 10, 2005, Anthony and Joann Poole filed a voluntary Chapter 7 petition in the Southeastern Division of the United States Bankruptcy Court for the Eastern District of Missouri. That case is assigned Cause Number 05-10808-399 and is pending before the Honorable Barry S. Schermer, United States Bankruptcy Judge. Ferguson is an unsecured claimant in those proceedings. The Pooles dispute the claim. After an evidentiary hearing held on July 11, 2005, Judge Schermer denied Ferguson's motion to convert to the

Poole's case to a Chapter 11 and its alternative request to dismiss the case.

Ferguson now seeks leave to appeal Judge Schermer's July 11, 2005 decision to me.


28 U.S.C. § 158(a) empowers the district court with jurisdiction to hear appeals from final judgments and orders and, with leave of the court, from interlocutory orders and decrees entered by the bankruptcy court. In its motion for leave to appeal, Ferguson argues that I should hear this appeal because doing so "may materially advance the ultimate termination of the litigation."

Because I was not convinced that hearing this appeal would advance the proceedings, I ordered the parties to brief the issue of whether the motion for leave to appeal should be granted. The Pooles then filed an opposition to the motion for leave to appeal, contending that the relief sought by Ferguson may yet be ordered by Judge Schermer because the Trustee has now moved to dismiss the bankruptcy proceedings. Ferguson replied that the motion for leave to appeal should be granted and this case stayed pending resolution of the Trustee's motion in bankruptcy court. That the bankruptcy court may grant the relief Ferguson seeks from me warrants a denial of the motion for leave to appeal, not a stay of the proceedings. For this reason, I am denying the motion for leave to appeal and dismissing this case without prejudice.

Accordingly,

IT IS HEREBY ORDERED that appellant's motion for leave to appeal [#1] is denied.

IT IS FURTHER ORDERED that this case is dismissed without prejudice.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 7th day of November, 2005.